Report of J. Story of his charge at the Trial.

Whittemore
v.
Cutter.

} May Term 1813. at Boston.

I directed the Jury.

1. That the making of a machine like the Plfs for use and with a design to use it for profit, was an infringement of the Plfs patent, although no actual use were proved — and that the Plfs under such circumstances were entitled to treble the actual damage sustained by them. And that in estimating such damages, the necessary expenses of vindicating the right of the Plfs such as fees to counsel, expenses of witnesses, &c. beyond the taxable costs of the Plfs, ought to be considered as part of the actual damage sustained by the Plfs. And that in estimating such extraordinary expenses, the Jury ought to make a liberal allowance. That if besides the making, the Jury found a user of the machine they should give as actual damage to the Plfs the pecuniary value of the use which such machine would be to the Plfs or might be sold for by the Plfs during the time of the user.

2. That the letters patent in the case before the Court were for an improvement in manufacturing cards — and not for the whole machine described in the schedule annexed to the letters patent. The object of that specification was to show the manner of operation of the improvement — & not to secure to the patentee the whole machine thus described — ~~Best that was if it was a machine in fact the Jury were to consider in that~~

~~The Defendants solicitor not substantially exist before~~ — If however the letters patent were for the whole machine, and the invention were of an improvement only, the action would not be sustained - because the letters patent would be too broad —

3. That although the oath taken by the Plff Amos Whittemore previous to issuing of the letters patent was not in exact conformity with the 3 sect. of the act. of 21 Feby 1793. ch. 11., yet it formed no valid objection to the recovery in the action — the oath being merely directory to the Secretary of State and an official prerequisite to the issuing of the letters patent ~~by the~~ but not matter of which a court of law could take notice incidentally to defeat a suit of this nature -

4. - That if the Jury should be satisfied that the specification & drawings filed by the patentee in the office of the Secretary of State were not made in such full clear & exact terms & manner as to distinguish the same from all other things before known & to enable any person skilled in the art or science of which it is a branch or with which it is most nearly connected to make & use the same, this would not be sufficient to defeat the right of the Plfs to recover, in this action, unless the Jury were also satisfied that the specification & drawings were thus materially defective & obscure by design and the concealment made for the purpose of deceiving the public - In this respect our law differs from the law of England — That if the specifications & drawings were thus materially defective it afforded a presumption of a designed concealment which the jury were to judge of — That in deciding as to the materiality of the deficiencies in the specification & drawings, it was not sufficient evidence to disprove the materiality that by studying & examining such specifications & drawings, a man of extraordinary genius might be able to construct the machine by inventing parts - and by trying experiments - The object of the law was to prevent the expenditure of time & money in trying such experiments & to obtain such exact directions that if properly followed by a man of reasonable skill in the

particular branch of the art a science ~~to~~ might construct the machine — and if from the deficiencies it was impracticable for such a man to construct it, the deficiencies were material —

5. That the Plffs were competent to maintain this suit in this Court, although one of the Plffs only is the original inventor and patentee — and the other Plff is but an assignee of a moiety of the ~~patent~~ title & interest in the patented invention — That the assignment of a moiety of the title & interest ~~in~~ of a patent might well be ~~of~~ made under the 4 s. of the act. 21 Feby. 1793. ch. 11. ; and to maintain an action under that act & the 3 section of the act of 17 April 1800 ch. 25 ~~[illegible]~~ — it would be sufficient if the ~~party~~ ~~Plff~~ action were brought by all the persons who held the whole ~~[illegible]~~ title & interest of the patented invention, ~~[illegible]~~ ~~[illegible]~~ at the time of the alleged infringement thereof in whatsoever manner the title thereto might originally have accrued to them or any of them — or in whatsoever ~~manner~~, ~~[illegible]~~ undivided shares or moieties ~~proportions~~ the same might be held among themselves —

Whitemore
v.
Bartlett
3

United States of America } Circuit Court of the United States
District of Massachusetts ss } in & for the said District
May Term A.D. 1813

Amos Whittemore & Wm Whittemore Jr vs Wm F. Cutler

And now the said Wm F. Cutler after verdict & before judgement rendered thereon against him in this cause, comes & moves the court now here that judgment in this cause may be arrested & that no judgmt may be rendered upon the said verdict for the Pltfs, for the reasons & causes following, to wit:

1st That the said Wm Whittemore Junr as the assignee of the said Amos Whittemore, as in the Pltfs writ & declaration is alledged, cannot as co-plaintiff, according to law maintain this action against the Deft.

2nd That the Pltfs have not, in their writ or declaration, alledged that the patent mentioned therein was assigned to the said Wm Whittemore Junr according to law.

3d That the assignment mentioned & alledged in the Pltfs declaration of the Patent therein mentioned or one half thereof is not an assignment according to the statute in such case made & provided.

4th that the verdict rendered in this cause does not find the Deft guilty of the making, devising & using the machine in the Pltfs writ & declaration mentioned as is therein alledged against him.

5th That the alledged offence or wrong & injury with which the Deft is charged by the Plfs in their writ & declaration to which the Deft plead not guilty & upon which plea issue was joined is not by the verdict found to be true or to have been committed

6th That the making the machine set forth in the Plfs declaration is not an offence according to the intent & meaning of the statute upon which this action is founded.

Whittemore & al
vs.
Cutter

May term 1813 at Boston

I directed the Jury

1st. That the making of a machine like the Plfs fit for use & with a design to use it for profit, was an infringement of the Plfs patent ~~was~~ sufficient to maintain the action under the acts, altho' no actual use were proved — & that the Plfs under such circumstances were entitled to treble the actual damages — sustained by them — & that in estimating ~~such damages~~ the expenses of vindicating the right of ~~two~~ the Plfs such as fees to counsel, expenses of witnesses &c beyond the taxable costs of the Plfs, ought to be considered as part of the actual damage sustained by the Plfs & that in estimating such extraordinary expenses, the Jury ought to make a liberal allowance. That if, besides the making, the Jury found a user of the machine, they should give, as actual damage to the Plfs, the further value of the use which such machine would be to the Plfs or might be sold for by the Plfs, during the time of the user.

2nd That the letters patent, in the case before the Court, were for an improvement in manufacturing cards & not for the whole machine described in the schedule annexed to the letters patent — The object of that specification was to show the manner of operation of the improvement & not to secure to the Patentee the whole machine thus described — If however the

Letters patent were for the whole machine & the invention were for an improvement only, the action would not be sustained because the letters patent would be too broad.

3d That altho' the oath taken by the Plf Amos Whittemore previous to issuing of the Letters Patent, was not in exact conformity with the 3d Section of the act of 21 Feby 1793. ch. 11 yet it formed no valid objection to the recovery in the action the clause as to the oath being merely directory to the Secty of State & an official prerequisite to the issuing of the Letters patent; but not matter of which a Court of Law could take notice incidentally to defeat a suit of this nature.

4th That if the Jury should be satisfied that the specification & drawings filed by the Patentee, in the office of the Secty of State, were not made in such full, clear & exact terms & manner as to distinguish the same from all other things before known & to enable any person skilled in the art or science of which it is a branch or with which it is most nearly connected to make & use the same, this would not be sufficient to defeat the Plfs right to recover in this action, unless the Jury were also satisfied that the specification & drawings were thus materially defective & obscure by design, & the concealment made for the purpose of deceiving the public — In this respect our Law differed from the Law of England. — That if the specifications & drawings were thus materially defective, it afforded a presumption

of a designed concealment which the Jury were to judge of. That in deciding as to the materiality of the deficiencies in the specification & drawings, it was not sufficient evidence to disprove the materiality that by studiously examining such specification & drawing, a man of extraordinary genius might be able to construct the machine by inventing parts & by trying experimts. — The object of the Law was to prevent the expenditure of time & money in trying experiments & to obtain such exact directions that if properly followed a man of reasonable skill in the particular branch of the art ~~of~~ or science, might construct the machine. — & if from the deficiencies, it was impracticable for such a man to construct it, the deficiencies were material.

5th That the Plfs were competent to maintain this suit in this Court altho' one of the Plfs only is the original inventor & patentee & the other Plf is but an assignee of a moiety of the title & interest in the Patented invention. That the assignmt. of a moiety of the title & interest of a patent might well be made under the 4 S. of the act 21 Feby 1793 ch. 11. & to maintain an action under that act & the 3 Section of the act 17 Apl. 1800 ch 25. it would be sufficient if the action were brought by all the persons who held the whole title & interest of the Patented invention at the time of the alledged infringemt. thereof, in whatsoever manner the title thereto might originally have accrued to them or any of them — or in whatsoever undivided shares or moieties the same might be held among themselves.

Ex.

Amos Whittemore & al
vs. Wm F. Cutter

Points in arrest of Judgment.

1st That Wm Whittemore Jr, assignee of one half the Patent, cannot join in the action

2nd That the making the machine as alleged in the declaration & found by the Jury, is not an offense under the statute.

Points for a new trial —

1st No action could be sustained without actual damage sustained by the Plfs before action brought.

2nd Jury cannot give damages, where the Plfs have not proved they have sustained actual damages, for the purpose of remunerating them for expenses incurred in vindicating their right, or to enable them to support their action.

3d Jury cannot give damages to cover costs.

4th The Patent is for an entire machine & not for an improvement upon a machine, & is broader than the invention.

5th It must specifically appear by the Patent for what it is & it cannot be explained by witnesses.

6th That the Plfs cannot recover if the specification is not such as is required by the 3d sec of the act of 1793.

7th That the oath is material & if it appears on trial that the

patentee did not swear that he was the inventor of the thing patented, he cannot recover.

8 That the verdict is ~~not~~ contrary to & supported by evidence

9 That new and important testimony has been discovered

Whittemore & al. Appellants

Motion in arrest of Judgment and for new Trial.

Argued. Thursday 29. Jan. 1813

C. Pinkney for plaintiff 12 Feb 1813

Motion for arrest on the ground of misdirection as to damages, and relative to the construction given to the patent by the court for an American and not for the English patent.

The United States of America

To all to whom these Letters patent shall come:—

Whereas Amos Whittemore a citizen of the state of Massachusetts in the United States, hath alledged that he has invented a new & useful improvement in ~~the~~ manufacturing ~~of~~ Cards

which improvement has not been known or used before his application; has made oath that he does verily believe that he is the true inventor or discoverer of the said improvement.

has paid into the treasury of the U. S. the sum of thirty dollars, delivered a rect for the same & presented a petition to the Secty of State signifying a desire of obtaining an exclusive property in the said improvement, & praying that a Patent may be granted for that purpose: These are therefore to grant to the sd Amos Whittemore, his heirs administrators or assigns, for the term of fourteen years from the ~~second day of the twelfth month~~ of June he full & exclusive right & liberty of making, constructing, using & vending to others to be used the said improvement,

a description whereof is given in the words of the said

Amos Whittemore himself in the schedule hereunto annexed & is made a part of these presents.

In testimony whereof I have caused these letters to be made Patent & the seal of the U. S. is hereunto affixed

L.S.

Given under my hand at the ~~City of Philadelphia the 5th~~ Philadelphia day of June in the year of our Lord One thousand seven hundred & ninety seven & of the independence of the U. S. of America the Twenty first

~~By the President~~

John Adams

By the President

Timothy Pickering

Secty of State

City of ~~Washington~~ Philadelphia — to wit

I do hereby certify that the foregoing Letters patent were delivered to me on the third day of June in the year of our Lord 1797 to be examined; that I have examined the same, & find

To the Hon Timothy Pickering Esq.r Secretary of State

The petition of Amos Whittemore of Boston, Massachusetts.

Respectfully ~~shewes~~ says,

That he hath by assiduous application & study invented a Machine not known or used before for improving & facilitating the manufacture of Cotton & wool cards of all ~~sorts of~~ kinds, in which cheapness is ~~combined with~~ simplicity & far exceeds any heretofore invented. This Machine is described generally in a specification which accompanies this petition. Your petitioner promises that as soon as the nature of it will admit, to deposit a full & perfect Model of this Machine in your office. He therefore prays that Letters patent may be granted him for the exclusive right of using & vending the same as is by Law provided

Amos Whittemore
by his Attorney
Wm Whittemore

Phila May 12 1797.

Copy of the general specification annexed to the Patent:—

The Schedule referred to in these Letters patent & making part of the same, containing a description in the words of the said Amos Whittemore himself, of an improvement in manufacturing Cards.

A general specification of a Machine for manufacturing sheet cards, suitable for wool & cotton cards, ~~[illegible]~~ hatters cards, clothiers jacks & cards of every kind size or denomination. This machine is put in motion &c &c

(Here the whole Machine is minutely described)

&c

Witnesses present at signing
Nath.l Abraham
Thos. Edwards

signed Amos Whittemore

I swear that I do verily believe that I am the true Inventor or Improver of the Machine above specified

signed Amos Whittemore

Suffolk ss. Boston Apl. 28th 1797. Then the above named Amos Whittemore personally appeared & made oath that he verily believes he is the true Inventor or improver of the Machine above specified, before me

Thos. Edwards Justice of ye Peace

Ex.

Chap. CII - Vol IX - Page 287

An Act to extend to Amos Whittemore & Wm Whittemore the patent right to a machine for manufacturing Cotton & Wool cards

Be it enacted by the Senate & house of Representatives of the U.S. of America in Congress assembled that all the privileges & benefits granted to Amos Whittemore of the State of Massachusetts in consideration of a machine invented by him for the Manufacture of Cotton & wool cards within the U.S. by a patent of the Department of State & bearing date the 5th day of June 1797 be & the same are hereby extended to Amos Whittemore & Wm Whittemore Jr as joint proprietors of the sd Machine for & during the Term of 14 years to commence on the 5th day of June in the year of our Lord 1811 ~~##~~ any thing in the act entitled "An act to promote the progress of useful arts & to repeal the act — heretofore made for that purpose" to the contrary notwithstanding

J B Varnum
Speaker of the house of Representatives

March 3. 1809

Jn Milledge
President of the Senate pro tempore

approved
Th: Jefferson

them conformable to Law. And I do hereby return the same to the Secty of State, within fifteen days from the date aforesaid, to wit on this fifth day of June in the year aforesaid.

Charles Lee

Attorney General ~~of the U.S.~~

The Schedule referred to in these letters patent & making a part of the same, containing a description in the words of the said Amos Whittemore himself of an improvement in manufacturing Cards:

A general specification of a Machine for manufacturing sheet Cards, suitable for wool or Cotton Cards, hatters cards, clothiers jacks & cards of every kind size or denomination. This machine is put in motion &c &c (here follows a general description of the Machine)

To all people to whom these presents shall come

Amos Whittemore of Boston in the County of Suffolk & Commonwealth of Massachusetts, Card maker sends Greeting

Whereas the said Amos Whittemore has invented a new & useful improvement or machine for manufacturing Cards & upon a petition, presented by the said Amos to the Secry of State of the U. S. of America, representing the same & praying that a patent be granted therefor, the said Secretary of State did according to Law in such cases provided, cause Letters patent to be made out in the name of the U. S. bearing date the fifth day of June A. D. 1797 & of the Independence of the U. S. the twenty first signed by the President of the said U. S. & having the seal of the sd. States affixed thereto Granting according to law to sd Amos his heirs, Executors, administrators & assigns for the term of 14 years from the 2nd day of June last aforesaid the full & exclusive right & liberty of making constructing, using & vending to others to be used the said improvement or machine a written description whereof is annexed to & made a part of the said Letters patent (& a correct copy of which is also annexed to these presents) as in & by the said Letters patent, recorded in the office of the Secretary of State aforesaid may fully appear Now therefore Know Ye that for & in consideration of five hundred

dollars in hand paid by Wm Whittemore Jr of Boston aforesaid Cardmaker, the receipt whereof is hereby acknowledged, the said Amos Whittemore doth hereby bargain sell & assign over unto the sd Wm Whittemore his heirs Executors, administrators & assigns one full half part or moiety of sd improvement or machine, with all additions or improvements of the same made or to be made by either of the parties, & one half part of the patent right or other title & interest in & unto the same of him the said Amos; with one half of all priviledges profits & advantages of whatsoever nature made or to be made by any ways or means from the using or vending the same or from any patent already obtained or to be obtained for the same in any part of the world

To have & to hold the hereby assigned premises with all the priviledges & benefits to the same belonging to him the said William his heirs, Executors, administrators & assigns in as ample & beneficial a manner & for the same Term of time to all intents & purposes as the said Amos hath or legally may have & hold the same either as inventor thereof or by virtue of said Letters patent therefor. And said Amos doth covenant to & with the sd Wm his heirs Executors, administrators & assigns that he the sd Amos his Executors & administrators, shall & will do & execute or cause or procure to be done & executed all & every act & acts matter & thing for the better & more perfect assigning & assuring of his sd one half of sd machine & the Patent right & other title & interest therein with all the priviledges thereof as shall be requisite

or advised by council learned in the Law

In Witness whereof I the ſd. Amos Whittemore have hereunto ſigned my hand & affixed my ſeal this 5th day of July A. D. 1797

Amos Whittemore (L.S.)

Signed, Sealed & delivered in presence of
Saml Watson
Eber Lane

Suffolk June 14 1798 then Amos Whittemore acknowledged the foregoing instrument by him subscribed to be his free act & deed before me

Joseph Greenleaf Justice of the peace

District of Massachusetts ss: Circuit Court of the U. States
for the said District
May Term AD 1813.

Amos Whittemore and William Whittemore Junr vs
William T. Cutler.

I William T. Cutler defendant in this suit on oath declare and say that I can prove by the testimony of Abel Stowell of Worcester in the said District and of Eleazer Smith of Walpole in the said District that the said Eleazer Smith is the true and sole inventor of the improvement in the manufacture of cards for which the said Amos Whittemore obtained the patent upon which this action is founded and that the improvement for which the said patent was obtained was not the true and sole invention of the said Amos Whittemore but was suggested to him the said Amos Whittemore by the said Eleazer Smith and I do further on oath say that the above evidence has come to my knowledge since the trial of this cause and that it was not in my power to have obtained the said evidence upon the said trial

W T Cutler

Mass District 22 May 1813
Sworn to before me Wm S Shaw Clk

William F. Cutter's
Affidavit

May 1810	Moses Whiting	2 days travell'd	8 8 —	16 Miles
Jon.a Hale	attend.t	2 days Travell from Exeter	50 50 —	100 Miles
John Winch	"	1 day — "	38 38	76 —
May 1813.				
Caleb Cole —	"	25 days " from New York	300 300 —	600 —
Moses Whiting	"	5 days —	300	
Amos Whittemore	"	3 days "	6 —	12 —
Mich.l Morrison	"	3 days —		
Geo. Odiorne —	"	1 day		
Jonas Prentiss —	"	3 days — "	8 Miles —	8
Josh.a Avery —	"	2 days	7 —	14
Zelina Eastman	"	4 days		10 —
October 1813				
Caleb Cole —	"	27 days travell'd	300 300 —	600 —
Moses Whiting	"	4 days		
John Dwight	"	4 days		
Ruggles Whiting	"	2 days		
Mich.l Morrison	"	7 days		
Josh.a Avery —	"	3 " Travell'd		20 —
Amos Whittemore Jr.	"	3 " "		20 —
Sam.l Cutter —	"	5 " —		
Geo. Odiorne —	"	3 " —		
Sam.l Cutter Jr.	"	5 " —		
Zelina Eastman	"	5 days Trav.d		10 —
				124,96 5
119 days @ 1.25		— 119 29.75		94,80
		148.75		

79
N 25
8 5
98.75

Witnesses

United States of America
District of Massachusetts ss:

Circuit Court of the U. States for the said District

May Term AD 1813.

Amos Whittemore and William Whittemore Jun
vs. William F. Cutter

And now the said William F. Cutter after verdict and before judgment rendered thereon against him in this cause comes and moves the Court now here that the said verdict may be set aside and a new trial awarded in this cause for the causes and reasons following to wit:

1. Because the Court misdirected the Jury in stating to them that the mere making of a machine fit for use without proof of actual damage sustained by the Plfs in consequence thereof was an infringement of the Plfs patent and sufficient in law to support this action.

2. Because the Court misdirected the Jury in stating to them that the letters patent offered by the Plfs in evidence was not a patent for the whole machine described and specified in the schedule making a part of the said letters patent but for an improvement upon the said machine and that the whole machine was described in the said schedule to display wherein the said improvement consisted and what was the said improved part and not for securing to the Patentee a patent for the whole machine so described.

3. Because the Court misdirected the Jury in stating to them that the ~~a Certain Certain act entitled "An Act to promote the progress of~~ improvement in the manufacturing of cards invented by the said Amos Whittemore ~~in stitching the teeth of the card into the leather by machinery and complete instances by hand~~ was sufficiently specified in the said patent and schedule

(so as to distinguish the said improvement from the machines before known for the cutting stapling and crooking the wire and pricking the holes in the leather for the purpose of sticking the cards by and so as to sufficiently to specify wherein the said invention consisted and to prevent the said patent from being more extensive than the said Amos Whittemore actual invention or discovery.

4 Because the Court misdirected the jury in stating to them that the 3d section of the act intituled "An act to promote the progress of useful arts and to repeal the act heretofore made for that purpose" passed Feb. 21. 1793 is directory merely to the Secretary of State and the Attorney General of the U. States in respect to the issuing of letters patent and that the provisions thereof were not the subjects of judicial inquiry and cognizance in this cause or causes of this nature so that although the oath required by the said section might not have been taken by the said Amos Whittemore it would not avail the Defendant.

5. Because the Court misdirected the jury in stating to them that if they should be satisfied that the specification and drawings filed by the said Amos Whittemore in the office of the Secretary of State were not sufficiently full clear and exact to distinguish his said invention from all other things before known and to enable any person skilled in the art or science of which it is a branch or with which it is most nearly connected to make and use the same that this would not be sufficient to defeat the Plaintiffs right to recover in this action unless the jury were also satisfied that the specification was thus defective or obscure by reason of some concealment or addition which must fully appear to have been made for the purpose of deceiving the public.

6th Because the Court misdirected the jury in stating to them that if they found the Defendant guilty only of making the said machine so patented that in ascertaining the

actual damage sustained by the Pltiffs in consequence ~~of thereof~~ they would have a right to take into consideration the expences incurred by the Plaintiffs in consequence of this suit and to give them a sum which would liberally remunerate them for their expenses of counsel witnesses and papers ~~was~~ when sum was to be trebled

7 Because the verdict rendered in this cause is against or is not supported by evidence for that no evidence was offered to the Jury of any actual damage sustained by the Plaintiffs previous to ~~our~~ since the commencement of this action by reason of the making the said machine so found by the Jury and therefore the verdict ought to have been if for any for nominal damages.

8th Because the said William F. Cutter since the commencement of the trial of this cause has discovered new and important testimony which would have been sufficient to defeat the Pltiffs right to recover against him the Defendant as appears by the affidavit of the said William F. Cutter and which he could not procure upon the trial aforesaid

By John Pitman Jun
his Attorney

Motion for a
New Trial

Filed in Court this
22 May 1813 de bene
esse one O'clock
W S Shaw Clk

Notification of the special matter, intended to be given in evidence, under the general issue, pleaded by the defendants, in the action by Amos Whittemore & William Whittemore Jr. Ests. against William Francis Cutter defendant, for an alledged violation of a Patent-right to a Machine for manufacturing Cotton & wool Cards, brought to the Circuit Court of the United States, for the first Circuit, next to be holden at Boston, within & for the district of Massachusetts, on the first day of June A.D 1810 according to the form of the statute of said United States.

Firstly that the specification or description of the Machine filed, in the office of the Secretary of State of the said United States, by Amos Whittemore, to whom said Patent was granted, on the issuing thereof, does not contain the whole truth relative to the invention and construction of said Machine in this to wit: that the Machines used by the said Amos Whittemore & William Whittemore Jr at West-cambridge, under the pretence that they are the same Machines for which said Patent was obtained, are complete & sufficient for the purposes for which they are used; but that the said specification or description is throughout confused, incomplete & unintelligible, & it would not be possible from said specification or description to construct a Machine proper for the purpose of making Cotton or wool cards.

Secondly, The said Machine used by the said Plaintiffs at said West-

-Cambridge was not originally invented by said Amos Whittemore, but was invented by Messrs Elezer Smith, Lemuel Cox, Giles Richards, John McClench, Gersham Cutter, Abel Sherman, Samuel Condon, Ezekiel Cutter & by divers other persons, & was compiled, from their inventions, by said Amos Whittemore, who added, at most, very few parts of his own. And the said Patent, granted to said Amos Whittemore was obtained surreptitiously or upon false suggestion that he was the inventor of the Machine.

Fifthly the said Patent as issued, is void in as much as said Amos Whittemore swore, on the issuing thereof, not that he was the inventor either of the whole machine or of particular improvements to which he confined his claim; but indefinitely he swore that he believed himself "the inventor or improver of the Machine" which oath is not according to the form of the statute of the United States.

Thos Jackson & Eben Blanchard

Attys of Wm F. Cutter.

Boston April 26. 1816

United States of America
District of Massachusetts ss.

By the direction of the Attorney to Wm F. Cutter I have personally delivered to Samuel Dexter Esq. attorney to the defendents within named a true and attested copy of the aforegoing this 26th April 1816

Attest

Fees. (Charge Mr Jackson) Copy 3 - 53 - $2.80

[illegible]
Marshal

Relation to [illegible] Pullman's
[illegible] Sam'l Dexter Esq.

Patent

F. W. Carter

Caleb Cole having engaged with the Newburyport Manufacturing Company, to keep their Machines in repair & to stick all their Cards at stipulated price for one year & which gave him a net profit of nearly or quite three hundred per month, could not be prevailed on to leave his business without a promise, on our part, to make good to him the damage, he sustained by leaving it. which he said including his expences was, (both terms) Two hundred dollars, which I considered not unreasonable & paid him that sum as per his acct settled 15th Dec. 1814.

I went to Exeter New Hampshire, on purpose to summon & engage Jona Hale Esq. to attend Court, which he did June 1812. Expences $20. I sent a man from Haverhill New Hampshire to summon him again to attend at the last trial —

Boston June 12th 1815 — Wm Whittemore Jr

N.B. Acct for copying drafts & affidavits, are exhibited —

Amos Whittemore & Wm. Whittemore Jr. of West Cambridge in the County of Middlesex & Dist. of Mass., Cardmakers, Plffs, vs. Wm. F. Cutter of Charlestown in s.d County of Middlesex in s.d Dist. of Mass., Card-maker, Defdt. in a plea of trespass on the case for that whereas &c. (see Declr. so far as "Dollars") (then Copy Notice of Special matter as far as signatures of Eaches & Bilderland) —

This action was commenced at the June Term of this Ct. AD. 1810, & from thence ~~[illegible]~~ was cont.d on motion of the plffs to the Oct. T. 1810 & from thence it was cont.d from term to term ~~[illegible]~~ by consent of parties unto the May Term AD. 1813, when the plff had leave to ~~amend~~ file a new declr. And then the s.d Wm. F. Cutter by his Atty John Pitman Jr. came & defended &c. (see Plea) Issue being thus joined, the cause after a full hearing was committed to a Jury sworn accordg to law to try the same, who after hearing all matters & things concerning the same returned their verdict therein upon oath, that is to say — The Jury find &c. (See Verdict A but not signature). Upon motion of the defdt this Verdict was set aside & a new trial ordered by the Court, & from s.d May Term the cause was cont.d to the Oct. T. AD. 1813, when the cause, after a full hearing was again committed to a Jury sworn accordg to law to try the same, who after hearing all matters & things concerning the same, returned their Verdict therein upon oath, that is to say, "The Jury find &c. (See Verdict B. but not signature). From s.d Oct. Term, upon the ~~plffs~~ Defendts motion for a new trial, the cause was cont.d from term to term unto this present term. And now the motion for a new trial is set aside & the plff remitting all damages over $20 — It is thereupon considered by the Court that the s.d Amos Whittemore & Wm. Whitt[illegible]e the plffs recover against

Ord. 1st Mon. F. Cutler the Defdt. triple damages ~~Found at~~ amounting to $60 & costs of suit taxed at $3.19.30

Exd. innes
27. Oct. 1815

Whittemore Val
vs
Cutler

District of Massachusetts ss.

Circuit Court of the United States
for the said District

Amos Whittemore & William Whittemore Junr vs.
William F Cutter

And the said William F Cutter comes and defends the wrong and injury when &c. and says that he is not guilty of the premises in manner and form as the Plffs have alleged against him & of this he puts himself upon the Country &c.

By John Putnam Junr
his Atty

And the Plaintiffs likewise
by their atty

Dexter & Prescott

Olea

Amos Whittemore &

William Whittemore, Jun.

William T. Cutler

Amos Whittemore et al
vs.
William T. Cutter —

Points ~~raised by Deft~~ in arrest of judgement.

1. That William Whittemore Jun assignee of one half the patent cannot join in this action.

2. That the making the machine as alleged in the declaration and found by the Jury is not an offence under the Statute.

Points for a new trial

1. No action ~~can be~~ ~~of the case~~ could be sustained with our actual damage sustained by the Plffs. before action brought

2. Jury cannot give damages when the ~~party~~ Plffs. have not proved ~~that~~ they have sustained actual damages, for the purpose of remunerating ~~the~~ them for expences incurred in vindicating their right or to enable them to support their action.

3. Jury cannot give damages to cover Costs

4 The patent is for an entire machine and not for an improvt. upon a machine and is broader than the invention

5. It must specifically appear by the patent for what it is. and it cannot be explained by witnesses

6 That the Plffs cannot recover if the specification is not such as is required by the 3d sec. of the act of 1793

7. That the oath is material and if it appears on trial that the ~~inventor did~~ patentee did not swear that he was the inventor of the thing patented he cannot recover

11

8. That the verdict is contrary to evidence

9. That new and important testimony has been dis-
-covered

District of Massachusetts ss:

Circuit Court of the United States,

October Term AD 1813.

Amos Whittemore & William Whittemore, Jun. vs.
William F. Cutler

And now the said William F. Cutler after verdict and before judgment rendered thereon against him in this cause comes and moves the Court here that the said verdict may be set aside and a new trial granted because the said verdict is against law and evidence and contrary to the expressed direction of the Court to the jury upon a point of law in this cause that the said verdict finds the Defendant guilty of making the machine mentioned in the Pltffs declaration and not guilty of the licensing and using the same, ~~but~~ ~~to~~ and assesses single damages in the sum of three hundred and fifty dollars, whereas according to law and the evidence and the direction of the Court the jury should have found a verdict for nominal damages.

John Pickman Junr
Attyr for Deft.

Whitemore & al
vs.
Cutter

Motion for New Trial

Filed in Court this
27 Oct 1873 in part
one O clock P M

In the action of Amos Whittemore et al vs

William F. Cutter

The Jury find the Defendant guilty of making the patented machine for manufacturing cards mentioned in the plaintiffs declaration contrary to the form of the statutes in manner & form as set forth in said declaration & assess single damages in the sum of four hundred dollars, and not guilty of the residue of the wrong charged in the declaration.

Affirmed this 20 May 1813 Samuel Gibbon Foreman

Vendut

A

The Jury are of opinion that the Defendant is Guilty of Making a Machine as set forth in the declaration and do assess the damages at four hundred dollars

Samuel Gibbon Foreman

Boston May 19th 1813

Whitworth v Cutler

~~Pleas &c~~

Miscellaneous papers

United States of America
District of Massachusetts.

Circuit Court of the United States
in and for the said District
May Term ~~A~~ 1813.

Amos Whittemore and William Whittemore Jun. vs.
William F. Cutler

And now the said William F. Cutler after verdict and before judgment rendered thereon against him in this cause comes and moves the Court now here that judgment in this cause may be arrested and that no judgment may be rendered upon the said verdict for the Plffs for the reasons and causes following to wit:

1. That the said William Whittemore Jun. as the assignee of the said Amos Whittemore as in the Plffs Writ and declaration is alleged cannot as co-plaintiff, according to law, maintain this action against the Deft.

2. That the Plffs have not in their writ or declaration alleged that the patent mentioned therein was assigned to the said Wm Whittemore Jun. according to law.

3. That the assignment mentioned & alleged in the Plffs declaration of the patent therein mentioned or one half thereof is not an assignment according to the statute in such case made and provided,

4. That the verdict rendered in this cause does not find the Deft guilty of the making devising and using the machine in the Plffs writ and declaration mentioned as is therein alleged against him.

5. That the alleged offence or wrong and injury with which the Defendant is charged by the Plffs in their writ and declaration to which the Deft plead not guilty and upon which plea issue was joined is not by the verdict found to be true or to have been committed.

6. That the making the machine set forth in the Plffs declaration is not an offence ~~against~~ according to the intent and meaning of the Statute upon which this action is founded.

By John Pickman Jun. his Attorney

Motion in Arrest
of Judgment

filed in Court this
22 May one Octoberth
de bene esse W S Shaw
Clk

Amendment of the Declaration

Nor that whereas by certain Letters Patent duly issued in the name of the United States of America by the Secretary of State, bearing test by the President of the United States & executed in due form of law, & dated the fifth day of June in the year of our Lord one thousand seven hundred & ninety seven, & here in Court produced was granted to said Amos Whittemore his heirs administrators or assigns for the space of fourteen years from said date the full & exclusive right & liberty of making, constructing, using, & vending to others to be used his said improvement in manufacturing cards, being a machine for manufacturing sheet cards suitable for wool or cotton hatters cards, clothiers jacks, & cards of every kind agreeable to a statute of the Congress of the United States made & passed the twenty first day of February in the year of our Lord one thousand seven hundred & ninety three entitled "an act to promote the progress of useful arts & to repeal the act heretofore made for that purpose." And whereas by a certain deed of assignment of the said Amos Whittemore under his hand & seal & executed in due form of law, & duly recorded in the office of the Secretary of State, dated the fifth day of July in the year of our Lord one thousand ~~eight hundred~~ seven hundred & ninety seven, & here in Court produced, the said Amos for a valuable consideration therein expressed, did thereby bargain, sell & assign unto the said William Whittemore Junior by the name & style of William Whittemore, his heirs executors, administrators & assigns one half part or moiety of said Improvement or machine & Patent right as therein expressed — Wherefore the

the said William became joint owner & proprietor with the said Amos of the said Improvement & Patent right thereof. And whereas the Congress of the United States ~~by an Act~~ made & passed an act dated the third day of March in the year of our Lord one thousand eight hundred & nine, entitled "An act to extend to Amos Whittemore & William Whittemore junior the Patent right to a machine for manufacturing ~~C~~ Cotton & Wool cards" which act is in the following words, viz. "Be it enacted by the Senate & house of representatives of the United States of America in Congress assembled, That all the privileges & benefits granted to Amos Whittemore of the State of Massachusetts, in consideration of a machine invented by him for the manufacture of Cotton & Wool Cards within the United States by a Patent issued from the Department of State, & bearing date the fifth day of June, one thousand seven hundred & ninety seven, be & the same are hereby extended to Amos Whittemore & William Whittemore junior as joint proprietors of said machine for ~~& during~~ the term of fourteen years to commence on the fifth day of June in the year of our Lord one thousand eight hundred & eleven; any thing in the act, intitled an "act to promote the progress of useful arts & to repeal the act heretofore made for that purpose," to the contrary notwithstanding". ~~And whereas the~~

whereby all the privileges & benefits granted to Amos Whittemore aforesaid in consideration of the same machine invented by him for manufacturing cotton & wool cards within the United States, by the Patent aforesaid, were extended to said Amos Whittemore & William Whittemore jr who are the same persons named in said act as joint proprietors of said machine as aforesaid ~~before~~ for and during the further term of fourteen years on the fifth day of June aforesaid eight & eleven as aforesaid

And whereas
by an other act of the Congress of the United States made
& passed the the seventeenth day of April one thousand
eight hundred, intitled an "Act to extend the
privilege of obtaining patents for useful discoveries
& inventions to certain persons therein mentioned
& to enlarge & define the penalties for violating the
rights of patentees, it is enacted, that where any
patent shall be, or shall have been granted pursuant
to this or the aforementioned act, & any person
without the consent of the patentee, his or her
executors, administrators, or assigns first obtained
in writing, shall make, devise, use or sell the
thing whereof the exclusive right is secured
to the said patentee by such patent, such person
so offending, shall forfeit & pay to the said
patentee, his executors, administrators or assigns
a sum equal to three times the actual damages
sustained by such patentee, his executors administrators
or assigns from or by reason of such offence
which sum shall, & may be recovered by action on
the case founded on this, & the first above mentioned
act in the Circuit Court of the United States
having jurisdiction thereof. Now the said Amos &
William in fact say, that the said William Flutter
in no wise ignorant of the premises, but contriving
in this behalf to injure them the said Amos &
William & deprive them of the benefit of the
said patent, ~~& the extension of it for an other term of~~ on
the ~~twenty fifth~~ twentieth day of November eighteen hundred
& nine & on divers days previous to that time,
without the consent of the said Amos & William or
either of them, or their assigns first had & obtained

United States of America
District of Massachusetts ss } Boston 24th Nov. 180[illegible]
Pursuant to the within I arrested the Body of William F. Cutter
& held him to Bail Samuel Prince D. U. S. Marshal
Fees Service — 2—
Bail Bond 50
2.50

Wm. Dexter

William F. Cutter

Mr. Weber

To the Hon. John David, Esq. judge of the District Court for the District of Massachusetts

Humbly shews.

William F. Cutter of Charlestown within the said District. that he is now confined within the limits of the Gaol within and for the County of Suffolk in said District. by virtue of an Execution which issued upon a judgment recovered and rendered by the Circuit Court of the United States within and for said District in favour of Amos Whittemore and William Whittemore jun. both of West Cambridge within said District of Massachusetts - cardmakers. And the said Cutter further shews. that said judgment was rendered in a civil action and that he is unable to pay the said judgment and that he has not estate real or personal to any more or greater amount than thirty dollars other than his necessary wearing apparel.

W. F. Cutter

Mass. Dist. Ss. — August 8. 1816.

To Amos Whittemore and William Whittemore jr. both of West Cambridge within said District, of Massachusetts, Cardmakers.

You are hereby notified to appear before me on Monday the ninth day of September next, at

the United States Court Room, in Court Street, Boston at eleven O. Clock A. M. then and there to show cause, if any you have, why the oath or affirmation provided & prescribed in the Act of Congress entitled "An Act for the relief of persons imprisoned for debt", should not be administered to William F. Cutter above named according to his application. Witness my hand and seal the day and year aforesaid.

Jn Davis
Dist Judge U.S.
Mass. District

United States of America
District of Massachusetts ss } Boston August 8th 1810

Pursuant to the foregoing I have notified Elmos Whittemore & William Whittemore Jun to appear at the time, place, & for the purposes named by reading the same in each of their hearing

Jam Prince Depy Marshal
Mass Dist

The Jury find the defendant guilty of making the machine of which the plaintiffs are patentees to the damage of said plaintiffs three hundred and fifty Dollars. ——— Samuel Ropes
Foreman

B

Whitewore v. Cutler

The Jury find the Defendant guilty of making the machine described in the plaintiffs ~~with~~ declaration in manner & form therein alleged and assess the single damages they have sustained by reason thereof at the sum of three hundred & fifty dollars, and that he is not guilty of the residue of the matters therein alleged against him

Samel Ropes
Foreman

Verdict.

B

Circuit Court of the United States
sitting at Boston, October Term 1812

In the case Wm. Whittemore Jr. & Thos. Whittemore vs. Wm. F. Cutler, it is agreed that the action be continued, without cost to either party.

Wm Whittemore Jun
for self & Thos Whittemore

Wm. F. Cutter
by his Atty. Geo. P. T. Degrand

State of Massachusetts

To Thomas Denny ~~Esq~~ in Leicester County of Worcester
~~Esquire~~ - Jonathan Hale of Topsfield, in the County of Rockingham & State of New Hampshire
~~Essex~~, John Winch of Amesbury County of
Essex -

Greeting.

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judges of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the first day of June next to give evidence of what you know relating to an action or plea of Trespass on the Case

then and there to be heard and tried betwixt Nathaniel and Wm Nathaniel Ladd & Amos Nathaniel Ladd

vs William T. Butler

Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at Boston the twenty seventh day of May, in the year of our Lord 1810

Wm T Shaw CLERK.

June Term 1840

I hereby Acknowledge that the within Summons has been duly served and that I have received the money for my travel and one days attendance

50 miles out
50 20 in
100 travel

Jonas Wade

I hereby acknowledge that the within Summons has been duly served and that I have received the money for my travel and one days attendance — travel from Amesbury thirty eight miles

John Winch

38
76 miles out & in

Boston 26 Octr. 1811

It is agreed that the action of Amos Whittemore & Wm. Whittemore Jr. vs. Wm. F. — Cutter be continued upon the same terms as it was last term of the Circuit Court of the US, for Mass.a District

Wm. F. Cutter
by his Atty.
P. S. F. Degrand

Wm Whittemore Jun

Boston 2 May 1812

It is agreed that the action of Wm Whittemore Jr & Thos Whittemore vs Wm F. Cutter now pending before the Circuit Court be continued from May Term to the next term, without cost to either party

Wm Whittemore Jr
P. P. F. Degrand for
Wm F. Cutter

Whittemore as
leather —

To Jonathan Hale Esq. of ~~Lyme~~ Coventry in the County of ~~Rockingham~~ Grafton State of New Hampshire

Greeting.

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judge of our circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of May current to give evidence of what you know relating to an Action or Plea of Trespass in case then and there to be heard and tried betwixt Amos Whittemore & Wm Whittemore Jun. Plaintiffs & Wm. Flutter defendant.

Hereof fail not, as you will answer your Default under the Pains and Penalty in the Law in that behalf made and provided. Dated at Boston the Sixth day of May, in the year of our Lord 1813

Wm. S. Shaw CLERK.

This day A. C. Webster read to me that a writ of Subpoena to [illegible] the Circuit Court of the United States now in session in Boston, and offered me my fees. But on account of ill health and other reasons I am not able to attend the Court. I attended Court three years since for the purpose of testifying in the same case. All I know relating to the subject is that one Eliezer Smith worked for me a number of years ago on a Machine for Executing the Carding business although he wrought on the Machine nearly one year he never obtained the object. afterwards Whitemore accomplished the business on different Principles and I understand obtained a patent Right

Jan.a Hale

Coventry 17th May 1813

LS.

To Moses Whiting of Boston Gentleman

Greeting.

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judge of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the twentieth day of October A D instant to give evidence of what you know relating to an action or plea of Trespass on the Case then and there to be heard and tried betwixt Amos Whittemore & al against William F Cutter

Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at Boston the Second day of October, in the year of our Lord 1810

(signd) Wm S Shaw CLERK.

A true Copy attest Jam Prince Deputy marshal

I certify that I attended court two days & travelled from Dedham, Eleven miles, to attend the court for the purpose herein

8 and
8 in
16 miles

Moses Wheeling

To Caleb Cole of the City & State of New York Carpenter
Moses Whiting of Boston
& John Dingee of Boston

Greeting.

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judges of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of October ~~next~~ instant to give evidence of what you know relating to an Action or Plea of trespass on the case

then and there to be heard and tried betwixt

Amos Williamson & Wm Williamson Jr Plaintiffs. against
William F Cutler Defendt

Hereof fail not, as you will answer your default under the Pains and Penalty in the Law in that behalf made and provided. Dated at Boston the Seventh day of October, in the year of our Lord 1813

Wm S Shaw CLERK.

I certify I have attended court seven days & travelled from New York on purpose to testify in this cause and home five hundred miles

Caleb Cole

I certify I have attended four days

Moses Ketcham

I certify I have attended three days

John Dwight

I certify I attended two days

R Wheeling

Oct 1813

To Caleb Cole of the City of New York - and State of New York -

Greeting.

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judge of our circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of May current - to give evidence of what you know relating to an Action or Plea of Trespass in the Case then and there to be heard and tried betwixt Amos Whittemore and Wm Whittemore Jun.r Plaintiffs & William F. Cutter defendant

Here of fail not, as you will answer your Default under the Pains and Penalty in the Law at behalf made and provided. Dated at Boston the sixth of May, in the year of our Lord 1813 -

Wm S. Shaw CLERK.

I hereby acknowledge to have seen this Summons & to have rec'd Twenty dollars for travel from New York, and one days attendance —

~~Caleb Cole~~

I certify that I have attended Court four days & travelled from the City of New York Two hundred & fifty miles to attend court in the Case for this purpose & two hundred & fifty miles back again to New York

Caleb Cole

To Samuel Cutler & Samuel Cutler junr of Boston, Caleb Cole of New York. **Greeting.**

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judge of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of October 1813 to give evidence of what you know relating to an Action or Plea of trespass on the Case

Anna & William Whittemore then and there to be heard and tried betwixt

& William F. Cutler

Hereof fail not, as you will answer your default under the Pains and Penalty in the Law in that behalf made and provided. Dated at Boston the fifteenth day of October, in the year of our Lord 1813

Wm S Shaw CLERK.

Certify I Summons

Original

Suffolk ss Boston May 14th 1813

have summoned the within named
Moses Whiting to appear at the time
and place within mentioned by reading
to him this summons in his presence
I also paid him $1.75 for his
attendance I also summoned the
within named Zebine Eastman to appear
at the time and place within mentioned
by reading to him this summons
in his presence I also paid him
him $1.62½ for him to attend

1.75
1.62½

Bradish Billings
D Sheriff

Suffolk ss Boston May 17th 1813
summoned the within named
Rufus Whiting to appear as within
commanded by reading to him
this summons Francis Dickinson

$1.50 cts

4.37
4.87

I certify I attended Court One day

1.75	4.87
1.62	3.37
3.37	1.50

To George Odiorne of Boston merchant & George Odiorne of Malden & Eliphalet Eastman of Charlestown County of Middlesex

To Ezra Whiting of Boston mariner

Douglas Whiting of Boston merchant

Amos Whittemore Jr. Jos. Thing of West Cambridge

Jonas Prentiss of Cambridge Mich. Morrison of Boston

Greeting.

YOU are required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judges of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of May 1813 to give evidence of what you know relating to an Action of trespass on the case then and there to be heard and tried betwixt

Amos & William Emmons ~~wife~~ Plaff

Wilkinson Defd

Hereof fail not will answer your default under the Pains and Penalty in the Law in that behalf provided. Dated at Boston the thirteenth day of April, in the year of our Lord 1813

Wm S Shaw CLERK.

I certify that I have attended court five days for the purposes mentioned in the annexed summons — Douglas Whiting — 5

I certify that I have attended court two days for the purposes expressed in the annexed summons & travelled six miles — Amos Whittemore Jr. 2

I certify that I have attended court three days for the purposes expressed in the annexed summons — Michael Morrison — 3

I certify that I attended one day for the within named witnesses Geo. Odiorne 1

I certify that I attended court three days & travelled four miles to attend court for the purposes expressed in the annexed summons — Jonas Prentiss — 3

I certify that I have attended court two days for the purposes expressed in the annexed summons & travelled seven miles. Joshua Avery 2

I have attended four days on this summons and travelled ten miles Eliphalet Eastman 4

Mr Charles Slade

Dr. to Nich.s King.

1810

June 8.th To Copying one respective and 12 sectional Drawings of Amos Whittemores Improved machine for making Sheet Cards. 17.00

Dr Cents

Rec.d the above in full

for Mr. Nich.s King

Geo Lyon

3

I certify I

Summons +

Summons

To George Odiorne of Boston merchant & Benjamin Odiorne of Charlestown in County of Middlesex

To Amos Whiting of Boston, mariner, Douglas Whiting of Boston merchant, Amos Whittemore, Jos. Avery of West Cambridge, Jonas Prentiss of Cambridge, Mich. Morrison of Boston

Greeting.

YOU are required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judges of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of May 1813 to give evidence of what you know relating to an Action of trespass on the case then and there to be heard and tried betwixt

Amos & William Whittemore ~~wife~~ Plaff

William Whittemore Defd

Hereof fail not will answer your default under the Pains and Penalty in the Law in that behalf provided. Dated at Boston the thirteenth day of May, in the year of our Lord 1813

Wm S Shaw CLERK.

I certify that I have attended court five days for the purposes mentioned in the annexed Summons — Moses Whiting — 5

I certify that I have attended court ~~four~~ two days for the purposes expressed in the annexed Summons & travelled six miles — Amos Whittemore, Jr. 2

I certify that I have attended court three days for the purposes expressed in the annexed Summons — Michael Morrison 3

I certify that I attended one day for the within named purposes Geo. Odiorne 1

I certify that I attended court three days & travelled four miles to attend court for the purposes expressed in the annexed Summons — Jonas Prentiss 3

I certify that I have attended court two days for the purposes expressed in the annexed Summons — & travelled two miles. Joshua Avery 2

I have attended four days on this Summons and travelled ten miles Lelinal Eastman 4

Suffolk ss Boston May 14th 1813 I have summoned the within named Moses Whiting to appear at the time and place within mentioned by reading to him this summons in his presence I also paid him $1.75 for his — Attendance I also summoned the within named Zebine Eastman to appear at the time and place within mentioned by reading to him this summons in his presence I also paid him him $1.62½ for him to Attend

1.75
1.62½ Bradish Billings
3.37 D Shuff

Suffolk ss Boston May 14th 1813 I have summoned the within named Rufus Whiting to appear as within commanded by reading this summons in his presence Thomas Bliss

.50
4.37
4.87

I certify I attended court one day

1.75
1.62
3.37

4.87
3.37
1.50

Mr Charles Slade

Dr to Nich.s King.

1810

June 6.th To Copying one respective and 12 Sectional Drawings of Amos Whittemores Improved machine for making Sheet Cards. ..... 17.00 Dollars

Recd the above in full

for Mr Nich.s King

Geo Lyon

Nicholas Kings
acct for copying Draft
Patrick Maitland
June 1810

Mr. Slade

To Geo. Lyon Dr.

May 28th 1810

To copying Specifn Notes of Reference &c. of Amos Whittemores improved Machine for making Sheet Cards - - - - - - - -	$ 6 .. 00
Seals to Certificates - - - - -	50
	$ 6 .. 50

Recd the above in full

Geo. Lyon

George Lyons Bill
for Copying Specifi=
cation - May 1810

May 1810

Bill of costs. Whittemore Ad. vs. Cutter. J. K. Williams exceptions to it.

No. 1. June Term 1810 2 witnesses travel & attendance. My objection to these items is that there is no certificate that the witnesses did travel or attend. And because the action was continued at the plff's motion.

No 2. 3. 4. 5. The items of costs of June Term 1811. October Term 1811. May Term 1812. and October Term 1812 are all objected to because the action was continued at those Term by agreement no costs to either party.

No. 6. May Term 1813. The items of $57.50 as also $4.50 as also $32.20 as also $25 as also $2.50 are objected to. 1st $57.50 for witnesses' attendance is too much as there was not so many days of their attendance as 46. 2d a part of their attendance fees was paid them, and is included in the $4.87 which is also my objection to the item of $4.87. 3d The $32.20 is more than the travel anticipated amounts to. 4th The $25 is objected to in toto, there being nothing in the case which gives a pretence to warrant it. 5th The $2.50 is objected to because an attorney's fee is to be allowed but once in any case. ~~has already been once allowed~~. The attorney's fee is not on the issue, but on the trial.

No. 7. October Term 1813. The attendance and travel of witnesses more days and miles than is certified, as will appear by an examination of the certificate. which is my objection to these items.

J. K. Williams
Atty to Cutter.

Aug. 5. 1815

160.37
150.93
8319=30

77
137
190

5 50
50
50
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1 00
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1 12
50
5 50
10-96
5-
23.96
1 33
25.29

4

4 0/00

4

4 0/00

4 Wm

4 0/00

23 0/00

49

4 Wm
W
1

To George Odiorne of Boston, Ebenezer Odiorne of Malden,
Moses Whiting of Boston, Zebina Cutler of Charlestown,

To Ruggles Whiting of Boston, Amos Whittemore Jr of Wat Cambridge, Joshua Avery of Cambridge
Michael Morrison of Boston.
Samuel Cutler, & Samuel Cutler Jr of Boston **Greeting.**

YOU are hereby required, in the name of the PRESIDENT OF THE UNITED STATES, to make your appearance before the Judge of our Circuit Court, to be holden at Boston within and for the District of Massachusetts, on the fifteenth day of October 1813 to give evidence of what you know relating to an Action or Plea of trespass on the case

then and there to be heard and tried betwixt Amos & William Whittemore Plffs &
William & Cutler Defs

Hereof fail not, as you will answer your default under the Pains and Penalty in the Law in that behalf made and provided. Dated at Boston the 14th day of October, in the year of our Lord 1813

Wm S Shaw CLERK.

I certify I have attended court 7 days & travelled miles to & from Court. M Morrison

I certify I have attended court three days & travelled twenty miles Joshua Avery

I certify I have attended court three days & travelled twenty miles Amos Whittemore Jr.

I certify that I have attended court five days — Sam & his Mark Cutter

witness — Nath Brentwood

I certify that I attended court at the time & place above & for the purposes named three days — Geo Odiorne

I certify that I attended court for the purposes mentioned in the foregoing summons, five days Samuel Cutter Jr.

6/7

Suffolk ss Boston Octo 16. 1813 I have summoned the within named Moses & Buggles Whiting to appear as within directed by reading this same to them in their presence & hearing I also paid each one dollar twenty five cents in hand

W Dennmore Const

Serve $1.25

I have attended five days and traveled ten miles on this Summons. Celina Eastman

Summons —
Subpoena Oct. 1813

Caleb Coles acct
Settled 15th Decr 1814

Dr Mr William Whittemore in account

1806	To two Shares in the Acqueduct one of which was conveyed to M Cotting the other to be conveyed to him	120	–
	To Interest on Do. to Nov 1814 —	57	60
1813 Augt 6	To Cash paid him by Mr Chadwick for 1 quarters Rent of my house	30	–
Novr – 2	" Cash paid by Do — Do —	30	–
Feby 7	" Cash pd — " Do — Do —	30	–
April 26	" Cash pd him by E Whittemore for good at Auction	"	90
May – 10	" Cash pd him by Mr Chadwick for rent	30	–
Augt 10	" Cash pd him by — Do — Do —	27	50
Septr – 24	" Cash pd him by Cutter & Whittemore for Note sent by my Son Freeman for him to Collect Not Collected —	55	–
	To my Time, travel and attendance at the Circuit Court of the United States in the Case of Amos Whittemore and Wm Whittemore Jun vs Wm F Cutter 2 terms	200	–
	To Cash for my part Repairing Stove in the Court House	5	–
	To making & Setting Scrapers in S Whittemores House	4	–
Novr – 21	" Cash paid him by Mr Chadwick for 1 quarters rent ending 1st Nov 1814	27	50
		$ 617	50

New York 15 Decr 1814

Errors Excepted

	1813 Augt 6	By Cash he paid Fredk Manson for Blinds per his acct	4	50
60	Sept 5	By Cash Recd of him at New York	20	—
		" 66 feet Merch^t Boards @ 2^25	1	32
—		" 41 lbs White lead @ 25^t.	10	25
—		" 2 Gallons boiled Oil — 1.25	2	50
—		" Prussian blue & Verdegrise	"	50
90		" 10½ lbs Flour	"	67
—		" Cash he paid Moses Grant & Co. paper	16	58
50		" Cash paid Wm Hill 3^d for papering my house	17	96
	1814 March 21	" Cash C Whittemore acct of Work on house	8	62
—	Octr 3	" Cash recd of J Whittemore for Rent	171	87
		" Do — paid U.S. Tax	1	69
	Nov 6	" Do Recd of him at New York for rent	140	—
	25	" My note dated Octr 6th 1806. given up	30	—
—		" Interest on Do 8 yrs & 1 mo.	12	95
		My note dated Augt 25th 1807 given up	40	—
		Interest on Do 7 yrs & 3 mo	17	40
—		1 Load manure delvd May 1809	1	50
—			504	29
50		By his check on the Bank of New York to Ballance	113	21
50			617	50

r. 1814
ted
Caleb Cole

United States
Mass. District } Circuit Court at Boston
October Term 1813

Enos Whittemore vs. Plaintiff. Petition.		
William Ch. Carter Def.		
Plaintiff's cost viz		
Writ	$ 2	15
Service	2	50
Entering &c	5	
Attendance June 1810. 11 days	3	63
1 Witness attendance 2 days	2	50
travel of witness 176 miles	8	80
Subpoena		56
Continuance		56
October 1810 attendance 7 days	2	31
1 Witness attendance 2 days	2	50
travel of witness 16 miles		80
Subpoena		56
Service of subpoena		
Continuance		56
~~June 1811 attendance 20 days~~	~~4~~	~~00~~
~~Continuance~~		~~56~~
~~November 1811 attendance 11 days~~	~~2~~	~~63~~
~~Continuance~~		~~56~~
~~May 1812 attendance 2 days~~	~~4~~	~~00~~
~~Continuance~~		~~56~~
~~October 1812 attendance 12 days~~	~~4~~	~~81~~
~~Continuance~~		~~56~~
May 1813 attendance 22 days	7	26
9 witnesses attendance 46 days (trial)	57	50
Service of 3 subpoenas $1.50	4	50
travel of 9 witnesses 64 miles	32	20
Copies of drawings &c from Patent office	25	68
~~[illegible]~~	~~11~~	~~11~~
Taxing, recording &c	5	
Def. moves for new trial, which is granted		
Continuance		56
October Term 1813 attendance 14 days	4	62
11 Witnesses, attendance 68 days (2nd trial)	85	00
travel of the above witnesses 650 miles	32	50
2 Subpoenas	1	12
Service of subpoena	1	
Atty's fee at the new trial	2	50

1814
May Term. Attendance 29 days 9. 57
Oct. Term Attendance 34 days 11 22
1815
May Term Attendance 16 days 5 20

Whitmore & Cutter, bill of cost

$172.57
5.31

United States Mass Dist. Circuit Court May term 1915

Amos Whittemore et al vs Wm J Cutter Deft.

Plaintiffs costs

June ~~Oct~~ term 1910	Writ	2	15
	Service	2	50
	Entry	5	00
	Attendance 11 days	3	63
	Witness attend 2 days	2	50
	travel 176 miles	0	00
	Subpena	00	56
	Cont	00	56
Oct term 1910	Attendance 7 days	2	31
	1 Witness Attend 2 days	2	50
	travel 16 miles	00	00
	Subpena	00	56
	Service of Subpena		
	Cont	00	56
June term 1911	Con		56
Oct	Con		56
May 1912	Con		56
Oct	Con		56
May 1913	Attendance 22 days	7	26
	9 Witnesses Attend 46 days	57	50
	Serving subpenas	1	50
	9 Witnesses travel	32	20
	3 Subpenas	1	60
	Copies of drawings	25	00
	Continuance	00	56
		160	37

Oct term 1913			
	attendance 14 days — —	4	62
	11 Witnesses Attend 60 days	05	00
	travel 650 miles — —	32	50
	2 subpenas — — —	1	12
	Service — — —	1	00
	~~4000~~		
May term 1914			
	attendance 29 day — —	9	57
	Cont — — — — —	00	56
Oct term 1914			
	Attendance 34 days —	11	22
	Cont — — — —	00	56
May Term 1915	Attendance 16 days —	5	20
	Attys fee — — — —	2	50
	filing recording &c. — — —	5	00
		319	30

Bill of cost

Whitmore v Cutter